

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	MB Docket No. 04-232
Retention by Broadcasters of	)	
Program Recordings	)	

Comments of the United States Conference of Catholic Bishops

The United States Conference of Catholic Bishops (“USCCB”) submits the following comments in the above-referenced Notice of Proposed Rulemaking, released July 7, 2004.

USCCB is a nonprofit corporation organized under the laws of the District of Columbia. All active Catholic Bishops in the United States are members of the USCCB. USCCB advocates and promotes the pastoral teachings of the Bishops in such diverse areas as education, health care, social welfare, immigration, civil rights, family life and communications. USCCB has extensive experience producing, funding and placing quality programming for television, radio and cable outlets. USCCB is committed to maintaining a place for religion and values on the public airwaves and to programming that inspires, informs and educates. Protection of the public’s right to file complaints about the broadcast of indecent speech is at issue in this rulemaking and is a matter of particular concern to the USCCB.

USCCB supports the Commission’s proposed rule to require broadcasters to maintain archives of programs aired by the broadcast licensees to enable the public to acquire evidence that indecent material has been aired. The current procedure for indecency complaints, which puts the initial burden on listeners and viewers to obtain a transcript from the broadcaster of the program at issue, but does not require the broadcaster to provide it when requested by the listener or viewer, inhibits the appropriate enforcement of indecency rules. Absent a transcript or tape, the Commission is forced to make its initial decision based on a listener’s or viewer’s memory alone, a situation unfair to the complainant, the broadcaster and the Commission. The fleeting nature of indecent broadcast programs (and the need for the proposed new program archives) has, of course, been known from the incipency of the Commission’s regulation of indecent broadcasts. The Supreme Court’s reasoning in FCC v. Pacifica, 438 U.S. 726 (1978) was based in part on the immediacy of broadcasting; “... [T]he broadcast audience is constantly tuning in and out, [so that] prior warnings cannot completely protect the listener or viewer from unexpected program content.” 438 U.S. at 748.

USCCB also supports the Commission's proposal, in this Notice, that program archives rules be developed so that citizens will have much-needed information with which to file petitions to deny, and file thorough comments in future and current proceedings before the Commission. To succeed, petitions to deny a license renewal must "contain specific allegations of fact sufficient to show that ... a grant of the application is prima facie inconsistent with [the public interest]...." 47 U.S.C. §309 (d). Since the Commission eliminated much of the documentation formerly required of broadcast renewal applicants, Deregulation of Radio, 84 FCC2d 968 (1981), recons. denied in part 87 FCC2d 787 (1981), aff'd in part, Office of Communications of the United Church of Christ v. FCC, 707 F.2d 1413 (DC Cir. 1983); Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 98 FCC2d 1076 (1984), recon. denied, 104 FCC2d 357 (1986), reversed and remanded solely on commercialization as to children, ACT v. FCC, 821 F.2d 741 (D.C. Cir. 1987), the public must rely instead on time-consuming and elaborate viewer (or listener) logs of programs or on broadcasters' vague quarterly program/issues lists. The Commission itself has recognized that licensees can easily defeat petitions to deny based on the quarterly lists by providing information they did not include on those lists. Spectacor Broadcasting, For Renewal of License of Station WIP(AM), 9 FCC Rcd 1729 (1993). With access to actual program records, the public may make their case against renewal on a more even footing with licensees (who have always had access to their own programming records).

Access to program records by the public will also contribute to greater specificity in comments in rulemakings before the Commission. The Commission requests that commenters supply details in those filings. For example, when the Commission requested comments on its proposed new ownership rules, 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules, 17 FCC Rcd 18503 (2002), the Commission was "especially interested in receiving comments that provide ... empirical data on the effects that competition and consolidation in the media industry...." 17 FCC Rcd at 18516, and "encouraged [commenters] to submit empirical data and analysis demonstrating ... the change in diversity levels ...." 17 FCC Rcd at 18519. Access to program archives would have assisted in providing information about the programming habits of multiple stations owned by a single entity.

When the Commission does promulgate regulations specifying how broadcasters must keep and make available programs, it must make the public aware of this new and valuable tool. On air, primetime announcements and notices on station web sites are two methods of educating the public of its right to acquire copies of programs.

USCCB applauds the Commission's recognition that more tools, such as citizens' access to program records, are needed to assist it in "enforce[ing] ... other types of complaints based on program content" Notice, par. 7. However laudable these efforts are, the Commission must take the next necessary step by defining what "program content" will satisfy the statutory requirement that broadcasters serve the public interest. The Commission must move decisively and open for public comment a rulemaking to establish clear, enforceable requirements that broadcasters determine the needs and interests of their communities of license, air at least a minimum amount of public affairs, news and

independently produced programs which meet those needs and interests, and report to the public their actions.

Respectfully submitted,

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